

By the Committee on Criminal Justice; and Senator Geller

307-2195-03

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A bill to be entitled
An act relating to complaints against health care practitioners; amending s. 456.073, F.S.; providing that a state prisoner must exhaust all available administrative remedies before filing a complaint with the Department of Health against a health care practitioner who is providing health care services within the Department of Corrections, unless the practitioner poses a serious threat to the health or safety of a person who is not a state prisoner; requiring the Department of Health to be notified if a health care practitioner is disciplined or allowed to resign for a practice-related offense; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 456.073, Florida Statutes, is amended to read:

456.073 Disciplinary proceedings.--Disciplinary proceedings for each board shall be within the jurisdiction of the department.

(1) The department, for the boards under its jurisdiction, shall cause to be investigated any complaint that is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient. A complaint filed by a state prisoner against a health care practitioner employed by or otherwise providing health care services within a facility of the Department of Corrections is not legally

1 sufficient unless there is a showing that the prisoner
2 complainant has exhausted all available administrative
3 remedies within the state correctional system before filing
4 the complaint. However, if the department determines after a
5 preliminary inquiry of a state prisoner's complaint, that the
6 practitioner may present a serious threat to the health and
7 safety of any individual who is not a state prisoner, the
8 department may determine legal sufficiency and proceed with
9 discipline. The Department of Health shall be notified within
10 15 days whenever the Department of Corrections disciplines or
11 allows a health care practitioner to resign for an offense
12 related to the practice of his or her profession.A complaint
13 is legally sufficient if it contains ultimate facts that show
14 that a violation of this chapter, of any of the practice acts
15 relating to the professions regulated by the department, or of
16 any rule adopted by the department or a regulatory board in
17 the department has occurred. In order to determine legal
18 sufficiency, the department may require supporting information
19 or documentation. The department may investigate, and the
20 department or the appropriate board may take appropriate final
21 action on, a complaint even though the original complainant
22 withdraws it or otherwise indicates a desire not to cause the
23 complaint to be investigated or prosecuted to completion. The
24 department may investigate an anonymous complaint if the
25 complaint is in writing and is legally sufficient, if the
26 alleged violation of law or rules is substantial, and if the
27 department has reason to believe, after preliminary inquiry,
28 that the violations alleged in the complaint are true. The
29 department may investigate a complaint made by a confidential
30 informant if the complaint is legally sufficient, if the
31 alleged violation of law or rule is substantial, and if the

1 department has reason to believe, after preliminary inquiry,
2 that the allegations of the complainant are true. The
3 department may initiate an investigation if it has reasonable
4 cause to believe that a licensee or a group of licensees has
5 violated a Florida statute, a rule of the department, or a
6 rule of a board. Except as provided in ss. 458.331(9),
7 459.015(9), 460.413(5), and 461.013(6), when an investigation
8 of any subject is undertaken, the department shall promptly
9 furnish to the subject or the subject's attorney a copy of the
10 complaint or document that resulted in the initiation of the
11 investigation. The subject may submit a written response to
12 the information contained in such complaint or document within
13 20 days after service to the subject of the complaint or
14 document. The subject's written response shall be considered
15 by the probable cause panel. The right to respond does not
16 prohibit the issuance of a summary emergency order if
17 necessary to protect the public. However, if the secretary, or
18 the secretary's designee, and the chair of the respective
19 board or the chair of its probable cause panel agree in
20 writing that such notification would be detrimental to the
21 investigation, the department may withhold notification. The
22 department may conduct an investigation without notification
23 to any subject if the act under investigation is a criminal
24 offense.

25 Section 2. This act shall take effect upon becoming a
26 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1928

- The CS includes an exception to the exhaustion requirement for cases in which the Department of Health makes a preliminary finding that the practitioner poses a serious threat to the health and safety of any individual who is not a prisoner. In such cases, the department could proceed with an investigation, finding of legal sufficiency, and disciplinary action even if the prisoner did not first raise the complaint through the inmate grievance process.
- The CS also requires that the Department of Health be notified within 15 days if the Department of Corrections disciplines a health care practitioner for an offense related to the practice of his or her profession. Notification is also required if a practitioner is allowed to resign for such an offense.